



Defense Acquisition University

# CONTRACTING OFFICER'S REPRESENTATIVE BREAK OUT SESSION



*Presented by:  
Kurt Chelf, CPCM  
Professor of Contracting  
Defense Acquisition  
University*

# Overview

|   |  |   |
|---|--|---|
| 1. What is a COR?                                     | 5. What's In My Contract?                      | 9. What is Contract Administration?           |
| 2. What Do I Need to Know about Ethics and Integrity? | 6. What If I Need to Modify the Contract?      | 10. How Do I Monitor Performance?             |
| 3. How Do I contribute to Planning the Acquisition?   | 7. What If the Contract is Changed by Mistake? | 11. How Do I Handle Issues with a Contractor? |
| 4. How Am I Involved in Awarding the Contract?        | 8. What Can I Say and What Should I Document?  |   |



# What is a COR?



# What is a COR?

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The COR's key role is to:

- Observe
- Document and
- Communicate

contractor performance to the contracting officer (KO) and contractor

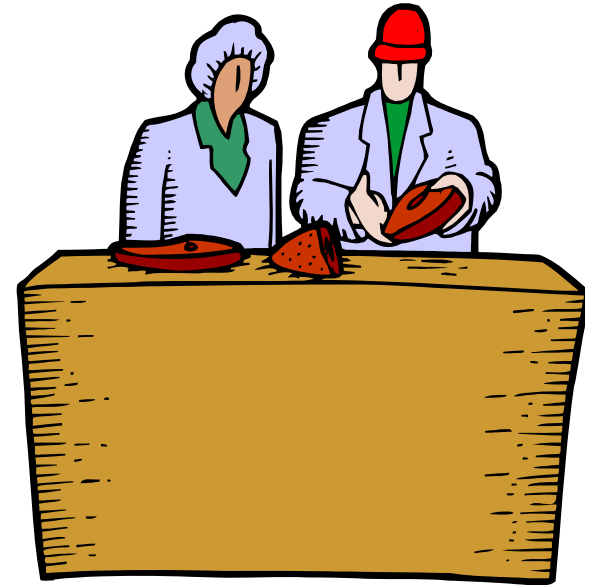


***For clarification:*** In this course, the title "COR" is synonymous with that of a COTR, ACOR, QAE/QAS, etc.

# What is a COR?

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- ✓ A Government employee
- ✓ A technical expert
- ✓ Qualified by training
- ✓ Specifically designated in writing
- ✓ Responsible for specific contract administration functions



# COR Authority and Appointment

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## A COR has **Specific** Delegated Authority

- Source of COR authority is the Contracting Officer (KO)
  - A COR must be designated/appointed by the KO in writing
- Authority specified in COR Designation Letter
  - Specifies scope and limitations of authority delegated
  - Separate designation made for each contract/order
- COR is **NOT** authorized to re-delegate any responsibilities delegated to them
  - Includes replacements, peers or subordinates
- COR must resign in writing

# COR Designation Acceptance

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Acknowledge acceptance of the duties by signing and returning the Designation Letter to the KO

# DoD COR Handbook

## Table of Contents

### Chapter 1: The Importance of Contract Surveillance

Related Duties

Chapter 1. Key Points

### Chapter 2: Roles and Responsibilities for Contract Surveillance

Nomination, Designation, and Appointment of the COR

Performance of COR Functions

Termination of COR Appointment

DoD COR Tracking (CORT) Tool

Chapter 2. Key Points

### Chapter 3: Ethics and Integrity

### Chapter 4: The Acquisition Team and Process

### Chapter 5: COR Responsibilities

### Chapter 6: Contract Structure

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Department of Defense

## COR HANDBOOK

March 22, 2012



Director, Defense Procurement  
and Acquisition Policy

OUSD(AT&L)

## Appendices

Appendix A. Forms

Appendix B. Contract Planning & Source Selection

Appendix C. COR Qualifications and Training

Appendix D. Acronyms and Terms

Appendix E. COR Resources and References

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# Type A

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## Type A Work Effort

- Low performance-risk, fixed-price requirements without incentives. Attributes of such requirements might include, for example: lack of technical or administrative complexity, no identifiable risk factors, limited requirement for technical expertise, low likelihood of modifications, effort is a follow-on to an existing contract, etc.
- COR duties/responsibilities are generally limited to minimal technical and/or administrative monitoring of the contract.

## Type A Experience and Training Standard for COR

- Experience:
  - 6 months general experience
  - Relevant experience as determined by supervisor and KO
- Training:
  - DAU's 8 hr CLC 106
  - Contingency module if in contingency environment
  - Acq Ethics & CTIP

# Type B

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## Type B Work Effort

- Other than low risk requirements. Attributes of such requirements might include, for example: the nature of the work is more complex, effort will be performed in multiple regions or in remote geographic locations, contract contains incentive arrangements or cost sharing provisions, contract is a cost-type or T&M/LH type.
- COR duties/responsibilities are of increased complexity.

## Type B Experience and Training Standard for COR

- Experience:
  - 12 months general experience
  - Relevant experience as determined by supervisor and KO
- Training:
  - DAU'S COR 222, ALMC COR course or equivalent
  - Contingency module if in contingency environment
  - Acq Ethics & CTIP

# Type C

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## Type C Work Effort

- Unique contract requirements that necessitate a professional license, technical license or higher education, beyond the type B requirements.
- Such requirements might include, for example: environmental remediation, major weapons systems, medical services, dental services, and veterinarian services, etc.
- COR duties/responsibilities involve highly complex or specialized requirements.

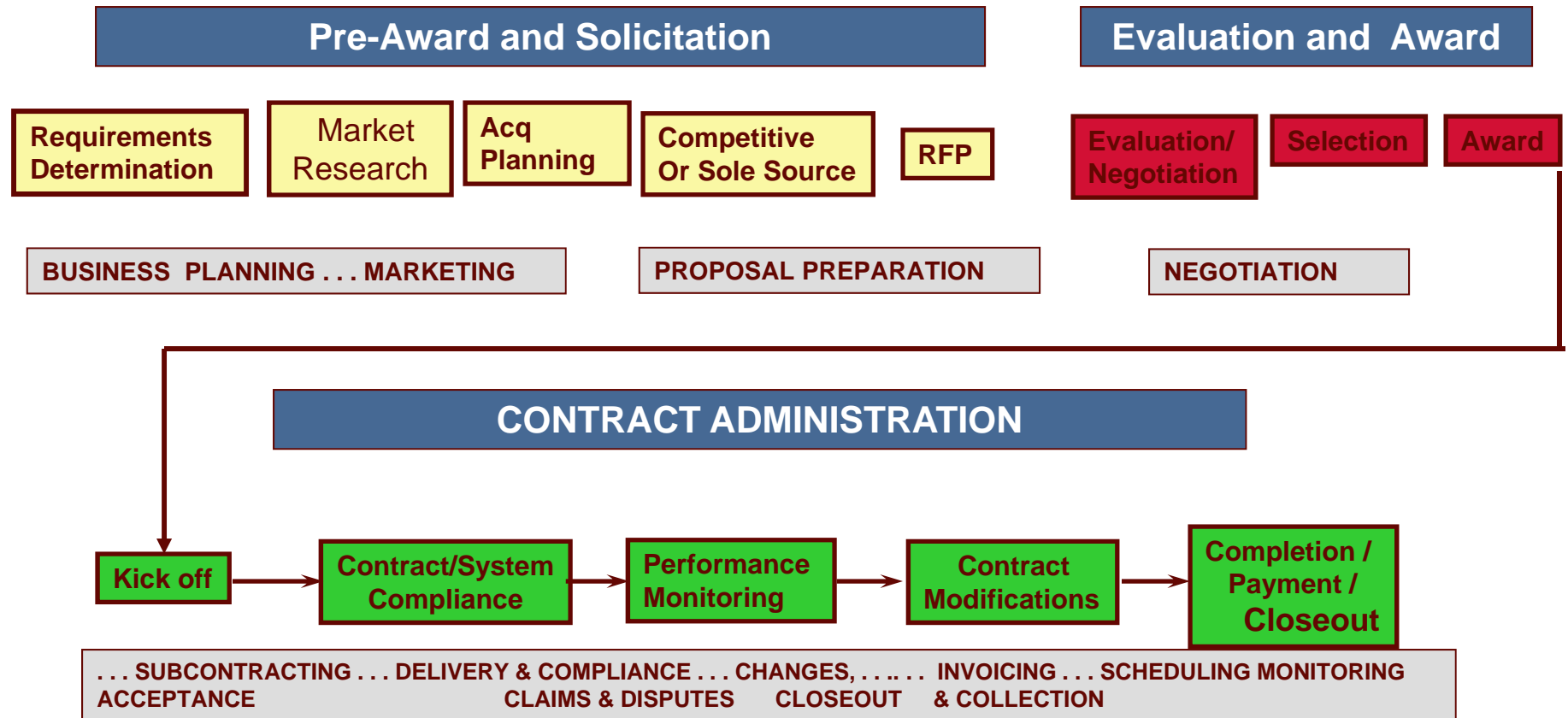
## Type C Experience and Training Standard for COR

- Experience:
  - 12 months general experience
  - Relevant experience as determined by supervisor and KO
- Training:
  - DAU'S COR 222, ALMC COR course or equivalent
  - Contingency module if in contingency environment
  - Mandatory/Specialized Training determined by Agency
  - Acq Ethics & CTIP

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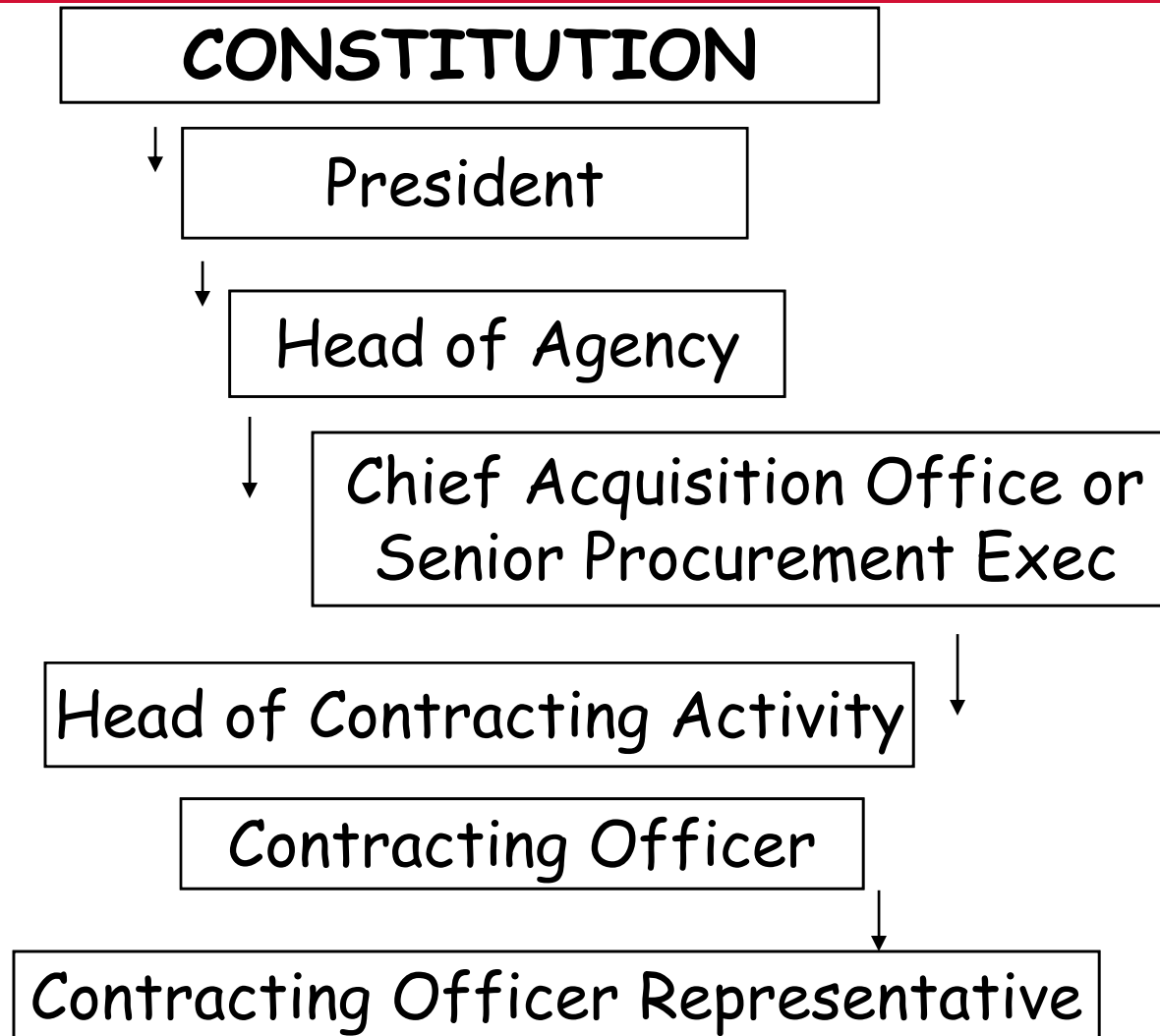
# Where Does the COR Fit?

## The Contracting Process



# What is the Flow of Authority?

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# Contracting Officer (KO) Authority

## Agent of the Government

- Authority comes in the form of a **Warrant**
- States the limitation of authority and is to be displayed in a prominent place

**Certificate of Appointment**

Under authority vested in the undersigned and in conformance with  
Subpart 1.0 of the Federal Acquisition Regulation

**I.M TheKO**  
is appointed  
**Contracting Officer**  
for the  
**United States of America**

Subject to the limitations contained in the Federal Acquisition Regulation and to the following:

Subject to the Limitations in the Federal Acquisition Regulations and Supplements thereto. This appointment has UNLIMITED monetary authority for all types of contracts and contract actions.

Unless sooner terminated, this appointment is effective as long as the appointee is assigned to:

\_\_\_\_\_ The Defense Acquisition University  
(Organization)

\_\_\_\_\_ OSD(AT&L)  
(Agency/Department)

\_\_\_\_\_ I.M. Theboss, Senior Procurement Official  
(Signature and Title)

01/01/2011 \_\_\_\_\_ DAU-007  
Date Signature

STANDARD FORM 1402 (10-83)  
Prescribed by GSA - FPMR (41 CFR) 101-11.6



Gives the KO the authority to obligate the Government, award contracts, and direct the contractor

# Types of Authority

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APPARENT AUTHORITY  
**DOES NOT EXIST IN  
THE GOVERNMENT**

## EXPRESSED AUTHORITY

**(Written)**

Warrant is issued to KO  
and  
COR designation letter  
details duties.

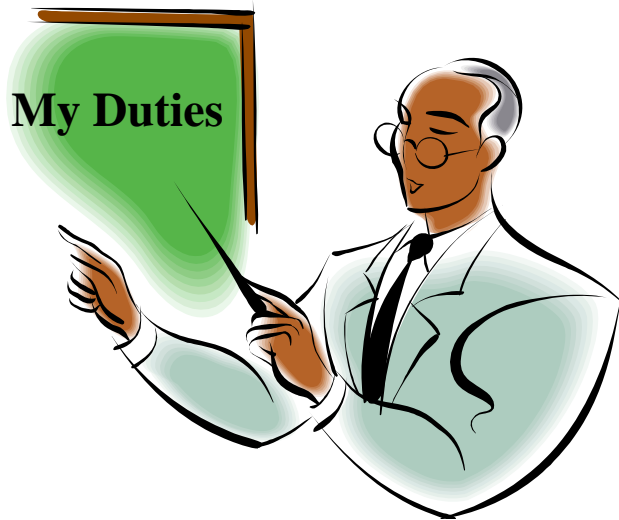
## IMPLIED AUTHORITY

**(Unwritten)**

CORs need to be careful  
using implied authority!

# What are the CORs Duties?

What type of duties will a Contracting Officer's Representative be asked to accomplish?



- Know the contract
- Work with your contractors
- Provide technical direction and guidance
- Liaison on technical matters between the KO and the contractor
- Support the mission and recommend changes
- Monitor and evaluate performance
- Ensure satisfactory, timely, delivery within the financial constraints of the contract



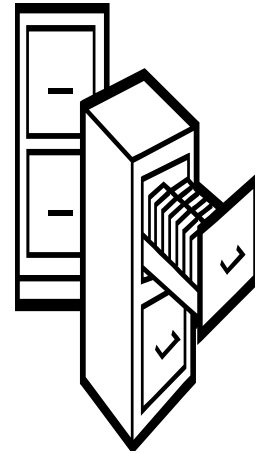
# COR Record Keeping

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## COR Files Must Contain:

- COR letter of designation
- All documentation of actions taken such as:
  - Copy of the contract & all modifications
  - Copy of acceptance documents & invoices
  - Memorandums for Record of actions issues
  - Performance Work Statement (PWS)/Statement of Work (SOW) with attachments
  - Quality Assurance Surveillance Plan
  - Performance assessments (negative & positive)
  - Weather Reports

COR file is retained for 3 years



# COR No No's

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- Modify ("change") the contract
  - Promise or authorize more work
  - Grant deviations or waivers of contract terms and conditions
  - Approve/Authorize Overtime\*
- Disclose source selection information
- Divulge budget information
- Get involved with subcontractors



# The Top Five Do's and Don'ts

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#5 Don't exceed Your Authority !

#4 Do keep the KO informed!

#3 Complete COR Training & stay current

#2 Promptly: “inspect” and “accept,” approve or disapprove invoices and let the KO know there is a problem (in writing).

And the Number One (#1) to do for the COR is

And ....# 1

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# Read The Contract!



# The Statutory and Regulatory Environment

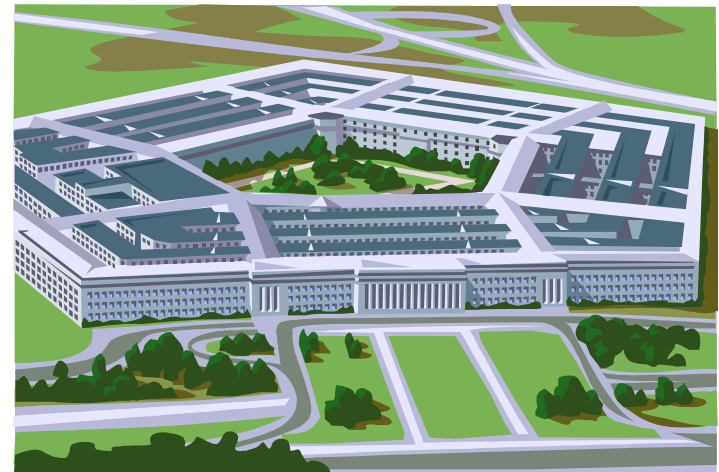
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# What Do I Need to Know About Ethics and Integrity?



# Not a Laughing Matter

©Cartoonbank.com



**"He sold us five and a half thousand boxes with no slots!"**



*"Miss Dugan, will you send someone in here who can distinguish right from wrong?"*



A dense word cloud featuring the names of veterans from the Vietnam War Memorial Wall. The names are written in various sizes, orientations, and colors (black, white, red, blue) against a background of horizontal stripes. Some names are clearly legible, such as "Ellis L. Blumhagen", "William E. Burke", "Robert Raggie", and "Steven Merkes". Other names like "L.H. Green", "Tracy Riggs", "Charles Marsden", and "Safavian" are also visible. The overall effect is a collage of individual stories.



# The Standard

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Avoid even the APPEARANCE of anything less than complete:

*integrity, objectivity, and impartiality*



Legislation and policies can't force ethical behavior

# Ethics in Government – the Basics

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- **Principles of Ethical Conduct for Government Officers and Employees**

- Presidential Executive Order 12674, April 1989
- Employee's Oath of Office

- **Federal laws and regulations governing:**

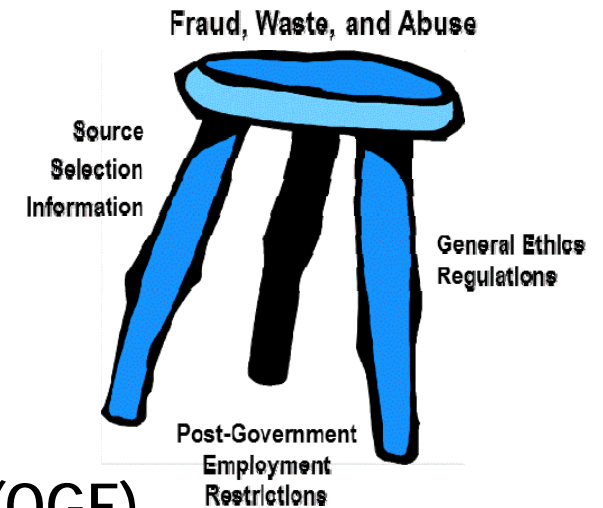
- Gov't. employees
- Contractors

- **United States Office of Government Ethics (OGE)**

- Federal Ethics laws >100 Pages of Statutes

- **Department of Defense:**

- Joint Ethics Regulation (DoD 5500.07-R)
- Standards of Conduct (DoDD 5500.07)



# Standards of Conduct and “The COR”

- Fiduciary Responsibility
- Procurement Integrity
  - Post Government Employment
- Conflicts of Interest
- The “Usual suspects”
  - Fraud, Waste and Abuse
  - Bribes
  - Kickbacks
  - Gratuities and Gifts



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# Ethics in Government Contracting

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"In order to maintain public confidence in the federal procurement process, government and contractor employees must follow exemplary standards of conduct."

**John Cibiric and Ralph Nash**  
*Administration of Government Contracts*

- 41 USC Chapter 21 – Restrictions on Obtaining and Disclosing Certain Information (Procurement Integrity Act (PIA))
- 18 USC § 201 – Gratuities
- 18 USC § 207 – Representation Restrictions
- 18 USC § 208 – Acts affecting a personal financial interest
- 18 USC § 209 – Salary of government officials and employees.

# Fiduciary Relationship

**Definition:** a relationship founded on trust or confidence relied upon by one person in the integrity and fidelity of another.



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# Restrictions on Obtaining & Disclosing...

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## Certain Information

(Formerly known as the *Procurement Integrity Act*)

- Provides that a person may not knowingly obtain “source selection information” or “contractor bid or proposal information” before contract award, other than as provided by law
- Ban applies to everyone, including Federal employees & contractor employees
- Prohibits certain Government officials from accepting post government employment

41 U.S.C. Chapter 21

# Obtaining and Disclosing - Ramifications

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- If an individual improperly discloses or obtains Source Selection Information (**SSI**) or Contractor Bid and Proposal Information (**CBPI**)
  - In exchange for anything of value, or
  - In order to obtain for himself, or give to anyone else, a competitive advantage in the award of a federal contract
- The **maximum penalty** is:
  - Five (5) years in prison,
  - Civil penalty of \$50,000 for each violation
    - \$500,000 for an organization
  - Adverse personnel action (e.g., termination)

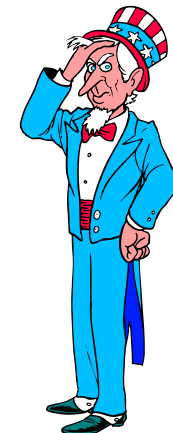


# Post Government Employment

Your role as a COR may impact Private Employment opportunities

- Restrictions (18 U.S.C. § 207 )
  - Agency officials participating personally and substantially in a Federal agency procurement for a contract shall report any contact with the contractor regarding employment and reject the opportunity or disqualify themselves from involvement in the procurement.
  - **DOES NOT** prohibit acceptance of employment
  - **MAY** restrict *scope* of employee's activities (1 & 2 year influence/ communication restrictions)

- Greater prohibitions apply to officials involved in acquisitions exceeding \$10M (41 U.S.C. 2101-2107)
- Civil and Criminal penalties vary by the statute violated



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# Post Government Employment

| OGE – Office of Gov't Ethics<br>(18 U.S.C. § 207)  | Former Procurement Integrity<br>Act (41 U.S.C. 2101-2107)  | JER - DoD 5500.07-R<br>(Chapter 8)   |
|--|--|--|
| <ul style="list-style-type: none"><li>• <b>DOES NOT</b> prohibit acceptance of employment</li><li>• <b>MAY</b> restrict scope of employee's activities<ul style="list-style-type: none"><li>• "Cooling Off" period (1 &amp; 2 year influence/communication restrictions)</li></ul></li></ul> | <ul style="list-style-type: none"><li>• Agency officials participating personally and substantially in Federal agency procurement shall report any contact with the contractor regarding employment and reject the opportunity or disqualify themselves from involvement in the procurement.</li><li>• Greater prohibitions apply to officials involved in acquisitions &gt; \$10M</li></ul> | <ul style="list-style-type: none"><li>• Avoid any activity that would affect the public's confidence in the integrity of the Federal Government, even if it is not an actual violation of the law</li><li>• Obtain counseling and written advice concerning restrictions on seeking other employment from their Ethics Counselor</li></ul> |

Civil and Criminal penalties vary by the statute violated

# Organizational Conflict of Interest

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- Refers to a situation which an individual, company or contractor may be unable to compete for, or continue a government contract because:
  - They are unable to provide *impartial* advice or assistance to the Government
  - Their objectivity in performing a contract may be *impaired*, or
  - They have an *unfair competitive advantage* due to involvement in other activities or relationships they are performing for, or have with, the government.

# Contractor Standards of Conduct



- Contractors **must** abide by standards of conduct as established by:
  - Statute
  - Regulation
  - Contract
- Violations could result in contractors being subjected to criminal, civil, administrative, and contractual remedies.

# Contractor Code of Business Ethics & Conduct

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## Implemented by FAR Clause 52.203-13

- For contracts over \$5 million and 120 day or longer period of performance, the Contractor Shall:
  - Establish a code of business ethics and conduct
  - Provide a copy to all employees working on the contract and promote compliance with the code among the contractor's employees
  - Flow down to Subcontractors

- 1) Promote business ethics and early discovery of improper conduct in the performance of government contracts
- 2) Institute ongoing business ethics training for its employees
- 3) Establish internal control system to facilitate timely discovery of improper conduct in connection with the performance of government contracts and ensure that corrective actions are promptly taken

# Conduct & Integrity - Bribery

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The term “bribery” means offering or giving something of value to a Government official or for a Government official to solicit or receive something of value in return for preferential treatment

- Soliciting or accepting Bribes:
  - May not **solicit** or **accept** any *gratuity, gift, favor, entertainment, loan, or anything of monetary value*
  - Criminal offense to seek, receive, or agree to accept anything of value
    - Being influenced in an official act
    - Committing or allowing fraud
- Bribery is a criminal offense: 18 U.S.C. § 201.

# Conduct & Integrity - Kickbacks

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The term “kickback” means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind provided to improperly obtain or reward favorable treatment in connection with a prime contract or a subcontract relating to a prime contract

- Prohibits kickbacks to prime contractors, prime contractor employees, subcontractors, and subcontractor employees
  - May not attempt, contemplate or receive a kickback(s)
  - Inclusion of kickback amounts in contract prices prohibited
- Penalties for any person who knowingly and willfully engages in prohibited conduct: 41 USC § 8706 and 8707
  - Criminal: 10 years imprisonment
  - Civil: fine of not more than \$10,000 per occurrence

Congress intended the Act to embrace the *full range* of Government contracting

# Conduct & Integrity – Gifts

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## Defined to include nearly anything of market value

- Does not include items clearly not gifts, such as publicly available discounts and commercial loans etc.
- General Rules:
  - You may not solicit gifts
  - You may not accept gifts from “prohibited sources”
    - A “prohibited source” is one who does, or seeks DOD business or one who could be substantially affected by your official decisions
  - You may not accept gifts given to you because of your official position as a Government official
- **Exceptions** to prohibition against gifts from outside sources:
  - Unsolicited gifts with a market value of \$20 or less per occasion, aggregating no more than \$50 in a calendar year from any single source;
  - Gifts motivated by a family relationship or personal friendship
  - Free attendance at certain widely-attended gatherings

# Conduct & Integrity – Gratuities

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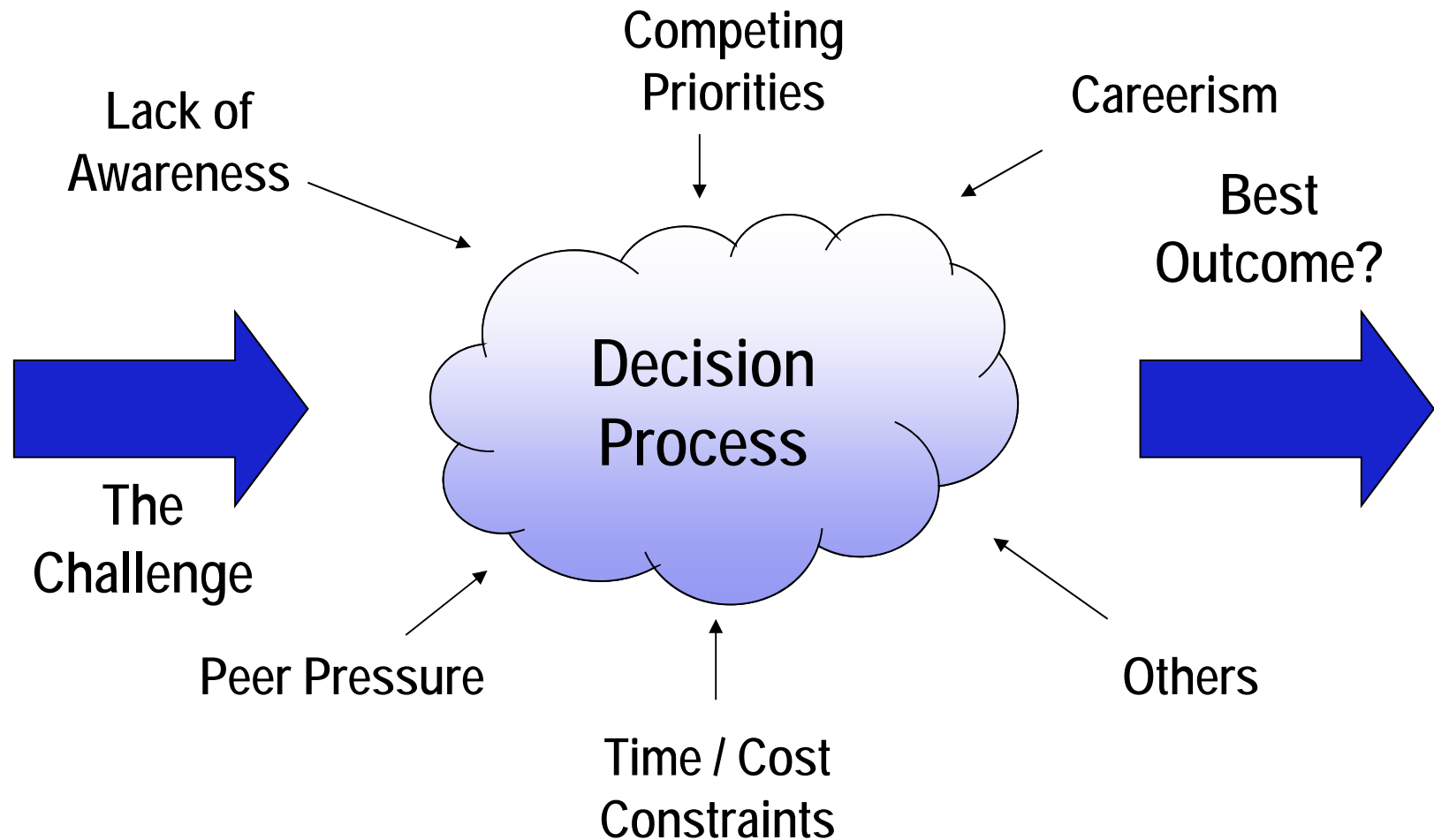
- Gratuities:
  - Gratuities constitute a crime when offered or given to a Government official or when a Government official solicits or receives a gratuity
    - 18 U.S.C. § 201
  - To be categorized as a gratuity, the item being offered must be a thing of value and be presented with the intent of corruption or favorable treatment

As a participant in the acquisition process, the COR must constantly be on guard of improper actions or those that can be construed as such



# Why Good People Do Bad Things

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# Unethical Behavior Early Warning Signs

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- “Everybody does it.”
- “Well, maybe just this once...”
- “No one will get hurt.”
- “No one will notice the difference.”
- “I don’t care how, just get it done.”
- “We didn’t have this conversation.”

# Watch for Indicators

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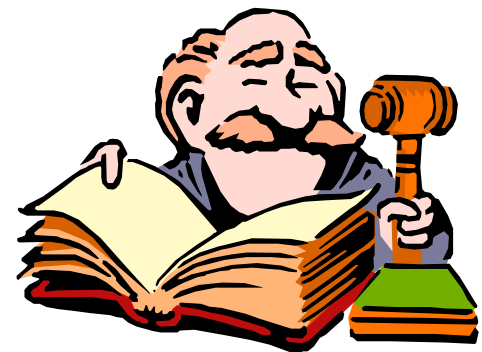
- Unauthorized product substitution
- Errors in cost reporting
- Potential defective pricing
- Incorrect performance payment requests
- Weak discipline in charging of labor hours
- Use of erroneous overhead rates
- Frequent discovery of errors



# Is Ignorance a Defense?

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- Is ignorance of the rules a defense if disciplinary action is taken against the employee?
  - NO
  - Expect periodic training where you work



# Procurement Integrity & Employment

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**Darleen Druyun**  
Former top Air Force Acquisition Official

- Nine months in federal prison
- Seven months in community facility
- 150 hours of community service
- \$5,000 fine

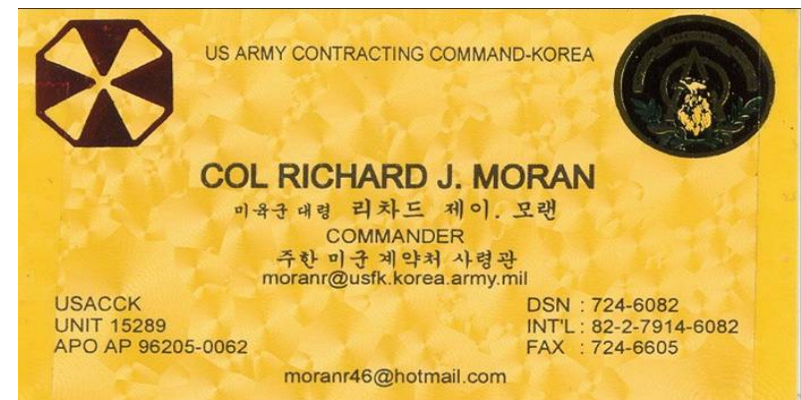


**Michael Sears**  
Former Boeing Chief Financial Officer

- Four months in federal prison
- 200 hours of community service
- Fined \$250,000

# Bribery and Bid-Rigging

- Former Army Colonel Moran, Former Commander, US Army Contracting Command, Korea
- Graduate of Industrial War College





# Bribes, Bid Rigging & Kickbacks



**Major Cockerham accepted millions of dollars in bribes from contractors who had DoD contracts in Iraq and Kuwait that he either awarded to the contractors or administered himself.**

- **17.5 years 9.6 million in fines**



**Both Major Cockerham and his sister face up to 20 years in prison and a fine of \$500,000 for the charge of money laundering, 15 years in prison and a fine of \$250,000 for bribery, and a maximum penalty of five years in prison and a fine of \$250,000 for conspiracy.**

***\$9.1 M in kickbacks***

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# Conclusion

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- What you should know:
  - Ethical rules governing government officials are stricter than the general rules governing private-sector employees
  - Know the Joint Ethics Regulation (JER)
  - Contact your supervisor and ethics counselor when questions come up
  - Report fraud, waste and abuse to the appropriate investigative agency



# How We Detect Fraud

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- Hotline tip 47%
- Management review 12%
- Internal audit 15%
- Account reconciliation 5%
- External audit 7%
- Other 14%



## *How Do I Contribute To The Pre-Award Contracting Process?*



# The COR's Role During Pre-Award Process

Identify and Define the Requirement

Acquisition Planning

Market Research

Develop the Requirements Documents

Government Property

Independent Government Estimate

Purchase Request (PR) and Funding

Evaluation Criteria

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*“Supporting the Mission”*

## What Mission?

- The Customer's Mission
- The customer is ...
  - The requiring activity
  - The user
  - AND the taxpayer

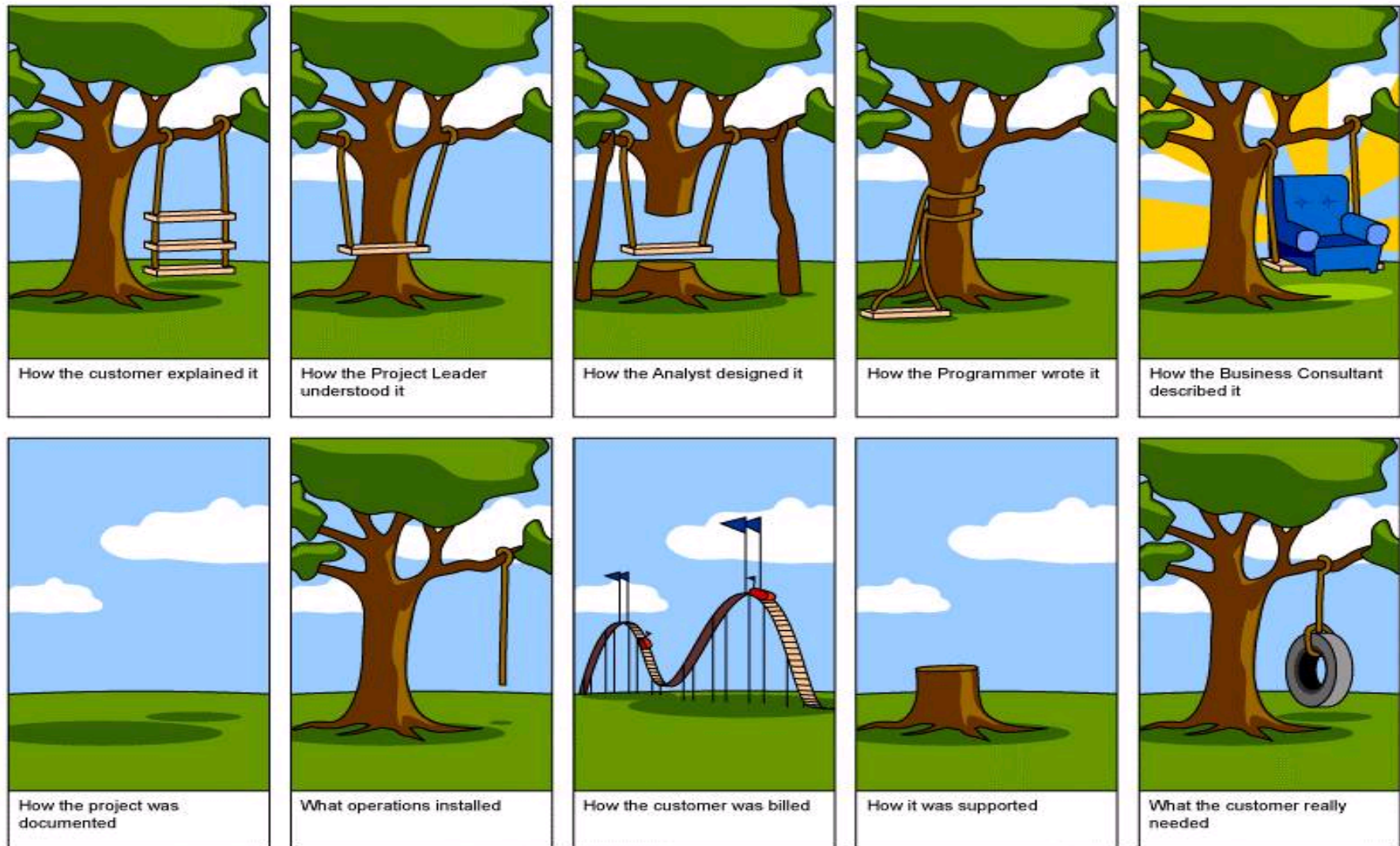


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**DAU**



# Acquisition Planning – the purpose is to avoid . . .



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# Acquisition Planning

## *Quality Assurance Surveillance Plan (QASP)*

Should  
include...

- Description of Roles and Responsibilities of those Implementing the QASP
- Explanation of Methods and Frequency
- Documentation Levels required by Government and Contractor
- Procedures for Resolving Discrepancies
- How COR will Notify Contractor of deficiencies, and
- How COR will determine Contractor's Degree of Responsibility

The QASP is NOT  
incorporated into the  
contract

Don't duplicate the contractors QA  
program, practice insight rather  
than oversight



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# Statement of Work (SOW)

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The portion of the contract that describes work to be done through the use of:

Specifications  
& Detailed  
Quality  
Standards

Minimum  
requirements

Quantities

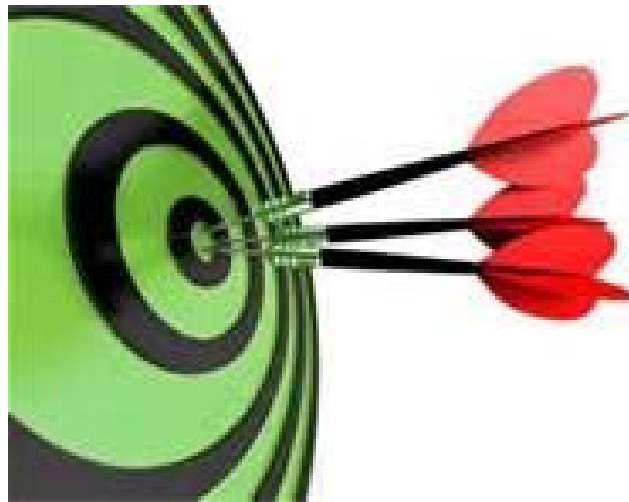
Performance  
dates

Time and  
location of  
performance

# Performance Work Statement (PWS)''

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Means a statement of work for performance-based acquisitions that describes the required results in *clear, specific* and *objective* terms with measurable outcomes



# Statement of Objectives (S00)

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*Government Prepared Document Incorporated into the Solicitation that:*

- *States the overall performance objectives Used in Solicitations when Government Intends to Provide:*
- *Maximum flexibility to each offeror to propose an innovative approach*

*Offerors then Write SOW or PWS Based on their Approach*

- *Methods*
  - *Skill Mix*
  - *Schedules*
  - *Quality Control*
- Winning SOW/PWS Incorporated into final Contract*



# Government Property – Policy & Processes

## FAR Part 45 - Government Policy

## DFARS Part 245 - DoD Policy

- Reporting of GFE to the DoD UID Registry
- Tagging, Labeling and Marking of GFP
- Reporting Loss of Government Property
- Contractor Property Management System Admin
- Reporting, Reutilization, and Disposal
- *Procedure, Guidance and Information (PGI)*

*DFARS 252.211-7007 and 252-245-7001 through 7004*



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## Department of Defense INSTRUCTION

NUMBER 4161.02  
April 27, 2012  
USD(AT&L)

SUBJECT: Accountability and Management of Government Contract Property

References: See Enclosure 1

1. **PURPOSE.** In accordance with the authority in DoD Directive (DoDD) 5134.01 (Reference (a)), this Instruction reissues DoD Instruction (DoDI) 4161.2 (Reference (b)) to:

a. Establish policy, assign responsibilities, and prescribe procedures in accordance with Part 45 of Federal Acquisition Regulation (FAR) (Reference (c)) and Part 245 of Defense Federal Acquisition Regulation Supplement (DFARS) (Reference (d)) for the accountability and management of Government contract property in the custody of defense contractors.

b. Assist DoD property managers, program managers, contracting officers and other acquisition professionals, logisticians, and other officials in understanding their roles and responsibilities.

c. Cancel DoD 4161.2-M (Reference (e)).

2. **APPLICABILITY.** This Instruction applies to the OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (hereinafter collectively referred to as the "DoD Components").

3. **DEFINITIONS.** See Glossary.

4. **POLICY.** It is DoD policy that:

a. Contractors ordinarily shall be required to furnish all property necessary to perform Government contracts in accordance with the policies and procedures of Reference (c). Property

*DoD Instruction 4161.2*



# Independent Government Estimate

Estimate of **resources** and **cost** a *prudent* contractor will incur in the performance of a contract for complex requirements or non-commercial items

- *An unbiased realistic cost estimate*
  - *Ensure final contract price is both fair and reasonable, achieving both best value and sharing of risk between government and contractor*
- *Does estimate agree or conflict with market research?*
  - *Well-documented IGEs provide essential program knowledge needed to evaluate and negotiate contractor proposals*
  - *Poor IGEs can sub-optimize a program, waste resources, and may lead to contract failure or default*
- *IGE is considered **confidential** information that should not be discussed or shared with contractor or potential offerors*

# Evaluation Criteria

Ensure that proposals are evaluated based solely on the factors and subfactors contained in the solicitation

- Proposal are not evaluated against each other for technical merit

*Protests are a significant problem when we don't follow our own rules!*



*FAR 15.303(b)(4)*

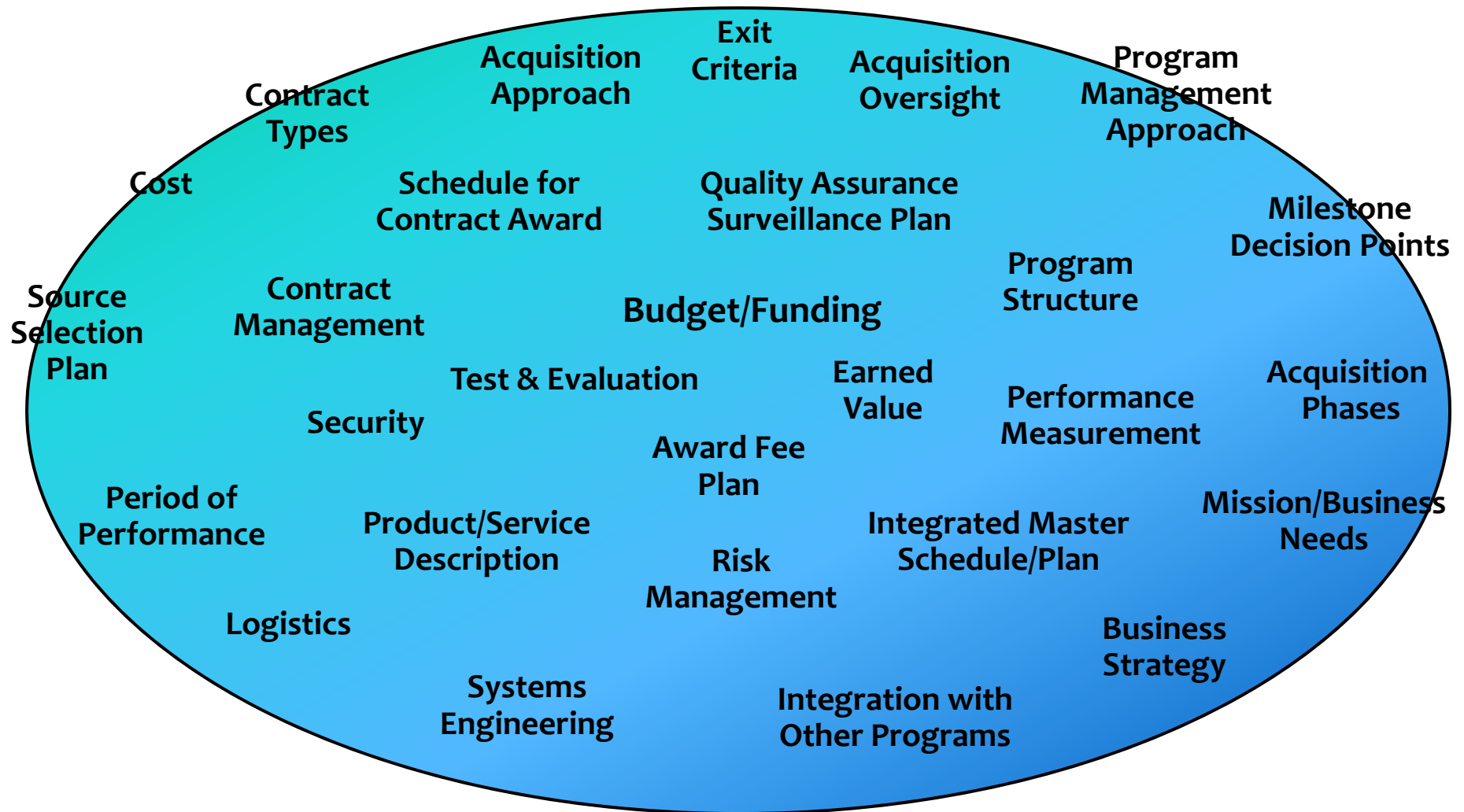
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## How Am I Involved in Awarding the Contract?



# Acquisition...Many Things to Consider



# The Contracting Process

## Potential COR Roles & Responsibilities in the Contracting Process

### Acquisition Planning

- Market Research
- Requirement Definition
- Written Acq Plan

### Contract Formation

- Evaluation Criteria
- Source Selection Team

### Contract Administration

- Performance Monitoring
- Guidance & Direction
- Inspection, Acceptance, Payment
- Closeout
- *Document, Document, Document*

# Contracting's Role

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Contracting is responsible for:

- Sources of Supply – Order of Precedence
- Competition
- Socio-Economic Programs
- Methods of Acquisition
- Solicitation and Contract Development
- Source Selection and Award

They assist with all other aspects of the  
procurement

# May I Request a Particular Contractor?

## Competition In Contracting Act (CICA) – 1984

### FAR Part 6

- Full and Open Competition
- Full and Open Competition *after* Exclusion of Sources
- Other than Full and Open Competition
  - Approval and Documentation Requirements (J&A)



- Only one Responsible Source
- Urgent and Compelling
- Industrial Mobilization
- International Agreement
- Authorized/Required by Statute
- National Security
- Public Interest





# How Do I Read My Contract?

## Understanding Contract Formats



# Remember: COR Responsibilities

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- ✓ **Read and know the contract**
- ✓ Have or develop technical expertise
- ✓ Manage relationships
- ✓ Monitor and document performance
- ✓ Manage property
- ✓ Inspect and accept deliverables
- ✓ Recommend changes or remedies
- ✓ Review/approve reports and invoices

# Start with the Contracting Officer

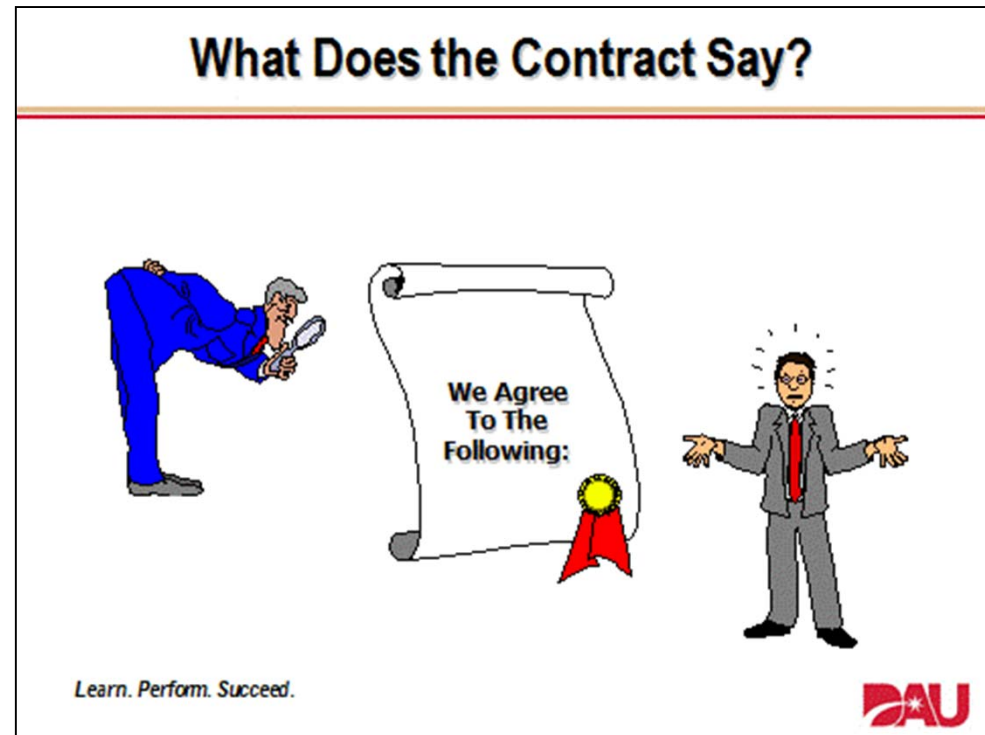
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- Who is my Contracting Officer (KO)?
  - The KO is the one who designated you as COR
- Refer to your designation letter to see generally and specifically what they want you to do
- The KO is entrusting you to oversee the contract
- Take time to get to know your KO and develop some ground rules for how and when you will interact-communicate

Depending on how your supporting contracting office is structured; you may communicate and interact with *contract specialists* who support a KO

# What are we Looking For

- Contract type
- Deliverables
- Invoicing Requirements
- Reports
- Security Requirements
- GFP Requirements
- Price/Cost Ceiling
- Special Clauses
- Subcontracting Requirements



# Contracts Are Always Perfectly Clear...??

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# What If the Contract is Contradictory?

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## FAR 52.215-8 Order of Precedence

- Defines how to resolve any inconsistency in the contract by giving “precedence” in the following order:
  - (a) The Schedule (excluding the specifications) - Sections A - H
  - (b) Representations and other instructions – Sections K- M
  - (c) Contract clauses – Section I
  - (d) Other documents, exhibits, and attachments – Section J
  - (e) The specifications



# What If the Contract Needs to Be Changed?



# When Does a Contract Need to Be Changed?

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## Examples of when a Contract Modification should be executed

- Adding or removing funding
- Changing delivery or period of performance (POP) date
- Changing any of the terms and conditions (T&Cs) in any part of the contract (including attachments)
- Changing *what* you need or *where* you need it
- Correcting mistakes
- Exercising options
- Suspend/Stop work
- Terminating work (partial or full)
- Adding additional work (there are limitations)



# Can the COR Modify the Contract?

## The answer is NO!

- Only a Contracting Officer (KO) may modify the contract
  - Done in writing by the issuance of a modification
- 
- The COR may/will **assist** the KO in many significant ways:
    - Identify to KO the need for changes, as soon as possible
    - Provide documentation to support the modification
    - Provide a technical evaluation, if required
    - Support any negotiations, if required
    - Monitor the contract as modified
- 
- The COR shall **not** encourage the contractor to perform any change prior to official direction from the KO



## What If the Contract is Changed by Mistake?



# How Does it Happen?

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## Constructive Change

Oral or written act (or failure to act) by an authorized Government official in *position of authority* construed by contractor as having same effect as a written change order (existing contract)

## Unauthorized Commitment

An agreement that is not binding solely because the government representative who made it *lacked the authority* to enter into that agreement on behalf of the government (both existing or no contract)

# Constructive Change

## Must involve:

- Order: improper word or deed by Government
  - Could be “inaction”
- Acted upon: required contractor effort that was not part of the contract (did not “volunteer”)

## Must Result in:

- Increase cost: change in performance beyond original contract requirement

## Common Types

- Contract Misinterpretation
- Defective Specifications
- Interference/Failure to Cooperate
- Withhold Superior Knowledge
- Acceleration

# FYI: How to Avoid

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|                      |  |
|----------------------|--|
| Acquisition Planning | <ul style="list-style-type: none"><li>• Careful preparation of requirement documents</li><li>• Removing ambiguities/inconsistencies in PWS/SOW</li></ul> |
| Read Your Contract   | <ul style="list-style-type: none"><li>• Clearly know what the contract requires</li><li>• What does it state... not what it ought to say</li></ul>       |
| Document             | <ul style="list-style-type: none"><li>• Maintain (keep) good records</li><li>• Documentation can eliminate misunderstanding</li></ul>                    |
| Communicate          | <ul style="list-style-type: none"><li>• Always act in good faith</li><li>• Follow the proper procedures</li></ul>  |

# CORs Role in Resolution

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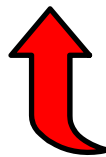
The COR plays a vital role in the resolution of a constructive change:

- Provide all pertinent existing documentation to KO
- Identify the actual changes in contract performance that have occurred
- Prepare a technical analysis/evaluation, if the contractor submits a proposal based on the change
- Assist the KO in negotiations
- Educate contractors regarding the proper notification and handling of changes

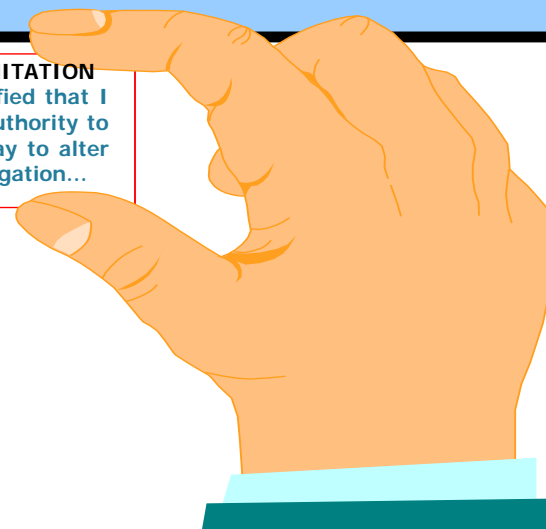
# Establishing Your Authority

## STATEMENT of LIMITATION of AUTHORITY

You are hereby notified that I DO NOT have the authority to direct you in any way to alter your contractual obligation. Further, if the Government, as a result of the information obtained from today's discussion DOES desire to alter your requirements, changes will be issued in writing and signed by the contracting officer. You should take no action on any change unless and until you receive such a contract modification.



STATEMENT OF LIMITATION  
You are hereby notified that I  
DO NOT have the authority to  
direct you in any way to alter  
your contractual obligation...



# Unauthorized Commitment

An unauthorized commitment requires ratification

- **Ratification:** The act of *approving* an unauthorized commitment by an official who has the actual authority to do so

The ratification process is similar across Federal Agencies. Organizations will have their own required formats and routing procedures for processing ratifications



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# Notional Ratification Process

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- Individual creating unauthorized commitment will submit a statement detailing:
  - Why normal procedures were not followed?
  - Did government have a bona fide need for service/good?
  - Did or will the government receive a benefit?
  - Was money available at the time of the action

- Senior Leader advises KO:
  - Concurrence that commitment should be ratified
  - Steps taken to prevent recurrence
  - Complete purchase description and funding
  - Description of disciplinary action taken or reasons why none was taken



# What Can I Say and What Should I Document?



# Develop A Solid Working Relationship

- Cooperation and Good Faith
- Mutual Confidence and Respect
- Problem Identification
- Problem Resolution
- Consideration Required
- Competitors Complaints



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# Communication Is Vital

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So all this talk of constructive changes and unauthorized commitments has you scared?



- Observation, communication and documentation are your biggest responsibilities

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# Knowing Your Lines of Authority

## Command Authority

COMMANDERS/  
DIRECTOR



DIVISION CHIEF



PM/SUPERVISOR



Requirement

## Contracting Authority

AGENCY HEADS



HCA- HEAD OF  
CONTRACTING  
ACTIVITY



Chief of the  
Contracting Office

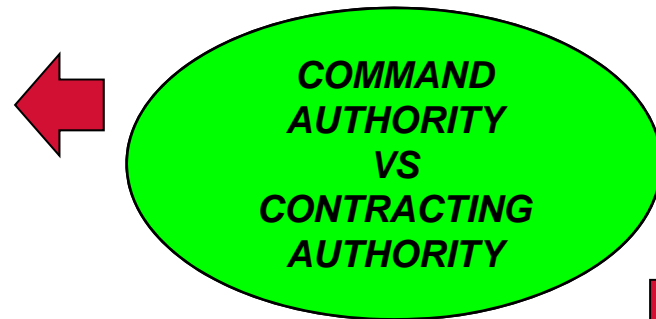


Procuring Contracting Officer  
(PCO) KO



Contracting Officer's Representative

Contract



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# FYI: Communicating with Your Boss

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The KO is 1<sup>st</sup> in your chain-of-command when it comes to issues relating to your functions and duties as a COR



- Your supervisor may not direct you to take actions that are not within the scope of your COR authority or that impact the contract

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# Formal Communications

- Occurs between government (KO, COR, HCA) and contractor individuals who are authorized to represent the contracting parties
- Usually in writing, but oral communication is also acceptable i.e. briefings, VTC, meetings
  - Oral communication should be confirmed in writing

The image shows three overlapping forms from the Department of Defense. The top form is 'SOLICITATION, OFFER AND AWARD' (DD FORM 101-2, 1-78). The middle form is 'ORDER FOR SUPPLY OR SERVICE' (DD FORM 131, 1-78). The bottom form is 'PROPOSAL EVALUATION FORM' (DD FORM 101-1, 1-78). These forms are used for formal communications between the government and contractors.



Source: Boyd, Bob, "The COR/COTR Answer Book", Management Concepts, Vienna VA, 2003  
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# Formal Communication No-No's

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- The COR shall never change:
  - pricing, cost, or fee
  - quantities
  - quality
  - scope of the contract
  - labor mix
  - terms and conditions
- The COR shall NOT:
  - make *commitments* or promises (oral or written) to any contractor
  - issue instructions (oral or written) to a contractor to start or stop work
  - authorize additional GFP
  - approve overtime
  - direct the subcontractors
  - accept non-conforming deliverables



# What Should You Document?

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- Contemporaneous documentation is vital
- Prepare Memorandum of Records for all meetings, significant verbal communication like phone calls, site visits and trips
- Maintain and print copies of any significant emails, all correspondence regarding performance
- Property, security, acceptance and invoice issues

What Should You Document?

**PROTECT THE  
GOVERNMENT'S  
INTERESTS**

# How Should You Give “Guidance”?

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It is natural to have questions,  
so cooperation is essential

- Guidance should only address or clarify government’s “intent” and document any deficiency in performance caused by a difference in interpretation
- If the contractor is incurring additional cost you have gone beyond guidance

Source: Boyd, Bob, “The COR/COTR Answer Book”,  
Management Concepts, Vienna VA, 2003



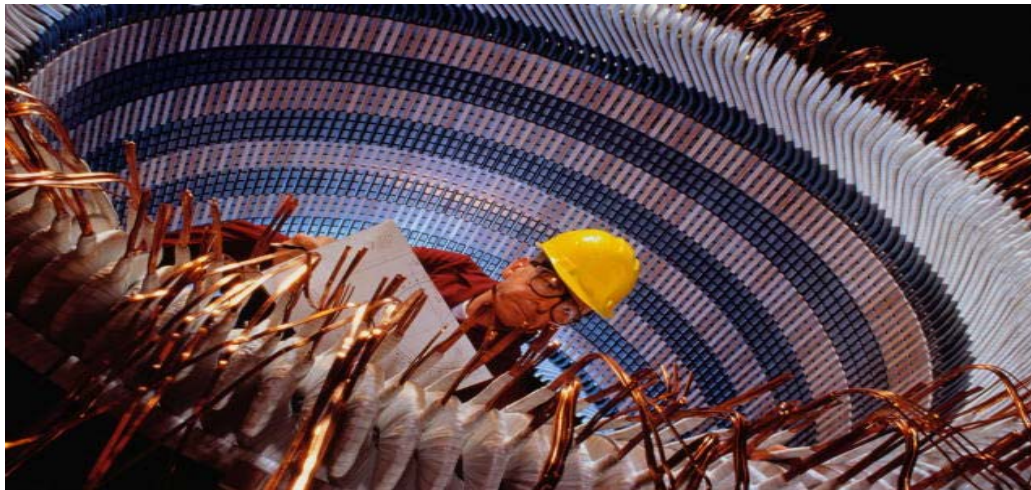
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# Giving Technical Direction

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One of the primary functions of the COR may involve the issuance of **technical guidance** to the contractor

- Statements of Work are frequently inexact, resulting in the need for technical instructions or clarifications as the work progresses
  - If there is disagreement, go see your KO



# Technical Direction -- Yes

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- Fill in details or otherwise serve to accomplish the contractual SOW
- Guidelines to the contractor which assist in the interpretation of drawings, specs, or technical portions of the SOW
- Shift in the work emphasis



# Technical Direction -- No

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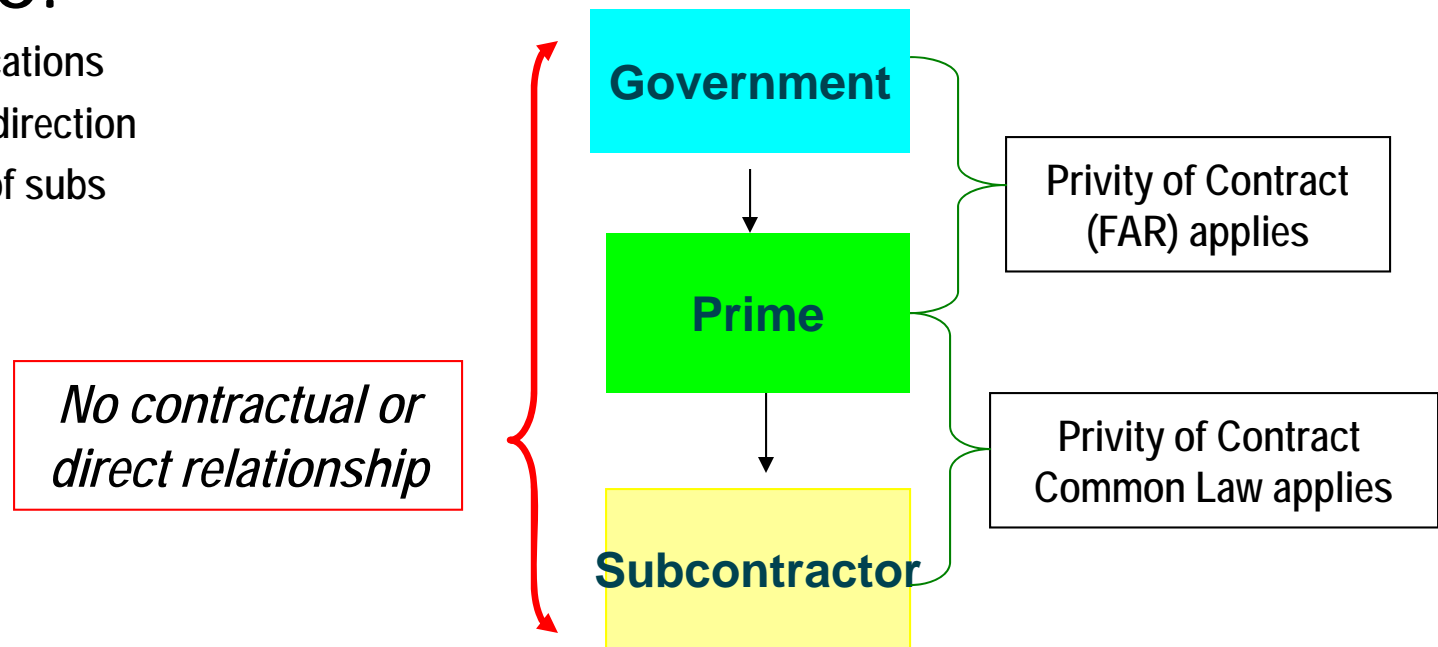
- Shall not be used to:
  - Assign additional work under the contract
  - Direct a change as defined in the contract clause entitled "Changes"
  - Increase or decrease the estimated contract cost, the fee, LOE, or POP; or
  - Change any of the terms, conditions, or specifications of the contract



# Prime vs Subcontractor Communication

- Prime has contract performance liability
  - If the sub “fails” it is up to the prime to resolve
- There is no “privity” between the government and the subcontractors. When it comes to subs, for you this means NO:

- Communications
- Technical direction
- Approval of subs



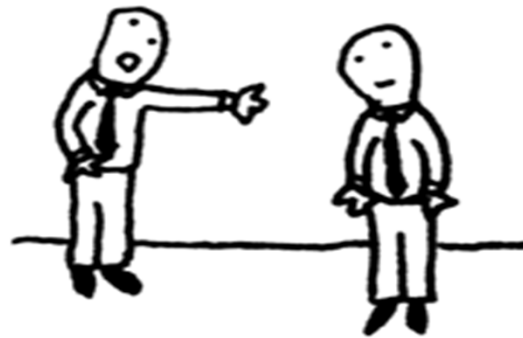


# FYI: Communicating Good Deeds

You may not recognize a contractor employee's superior performance i.e. don't include them in your quarterly awards program that means no *coins*, certificates etc. that come directly from you



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you have done a  
good job here! in  
internet auction  
feed back terms that  
translates to "A++++  
BEST EMPLOYEE  
EVER THANKS"

"WOULD HIRE  
AGAIN"



# The Bottom Line on Communication

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- Know the limitations on your authority
- Communicate with the KO and the contractor
- Discuss performance problems as they arise
- Understand marking and safeguarding rules
- Most important is... documenting your communications



**DOCUMENTATION – DOCUMENTATION - DOCUMENTATION**

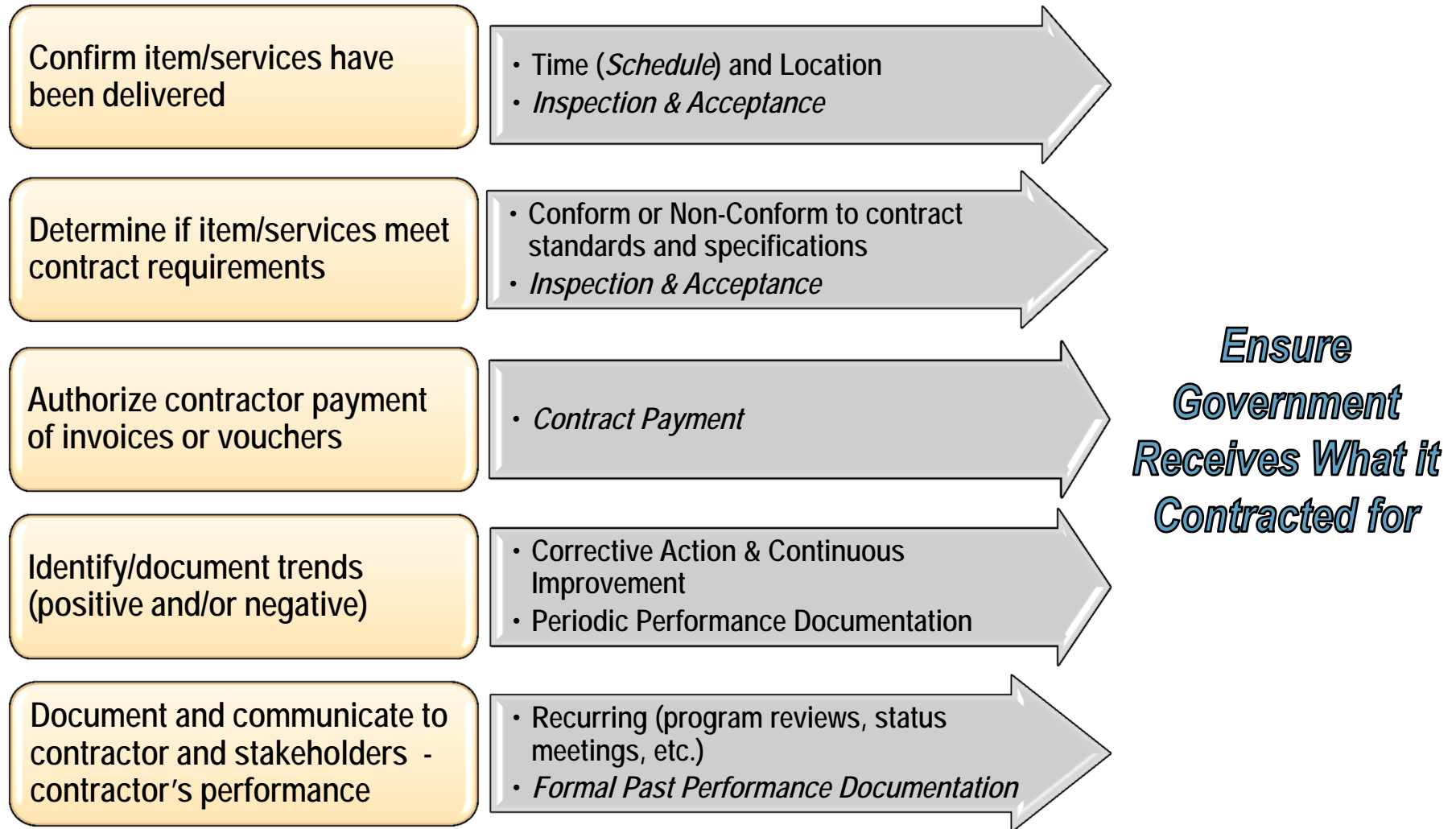
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# How Do I Monitor Performance?



# Why Monitor Performance



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# How Much Contract Monitoring?

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- Varies with complexity considering
  - Type of contract
  - Complexity of work
  - Scope of work
  - Contractor's experience
  - Contractor performance
  - Contracting environment
  - Supplies vs. services

# Monitoring/Surveillance Activities

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- Monitoring may involve:
  - Review of progress reports
  - Inspection and acceptance
    - Random sampling/Trend Analysis/Deliverable review
  - Meetings with contractor personnel
    - Site visits
  - Coordinating Security and Safety reviews
  - Property administration
  - Invoice/Voucher review
    - Payroll, time card checks

# Where Should the COR Begin?

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## Start with Post Award Orientation Meeting

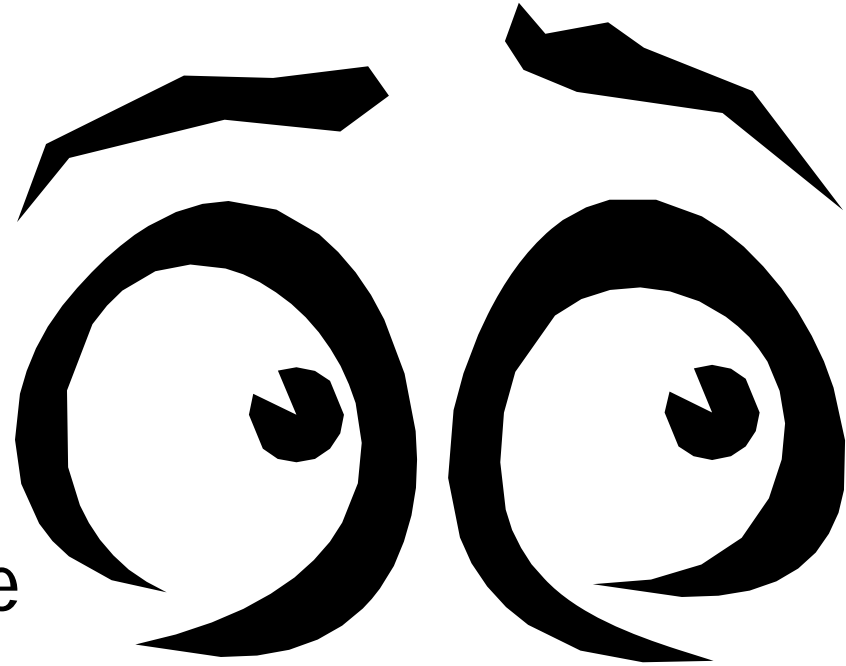
- ✓ Are “WE” on the same page..
  - “We” the government team
  - “We” the government and contractor
- ✓ Review contract requirements
- ✓ Decide how to resolve problems
- ✓ Identify and resolve oversights



# What Am I Monitoring?

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- 👍 Progress
- 👍 Performance
- 👍 Security
- 👍 Safety & compliance
- 👍 Property
- 👍 Acceptance & Payment



# Coming to the End of Monitoring

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- Documenting Past Performance
- Contract Closeout







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How Do I Handle  
“Issues”  
With the Contractor?

# Contractual “Issues” - Topics

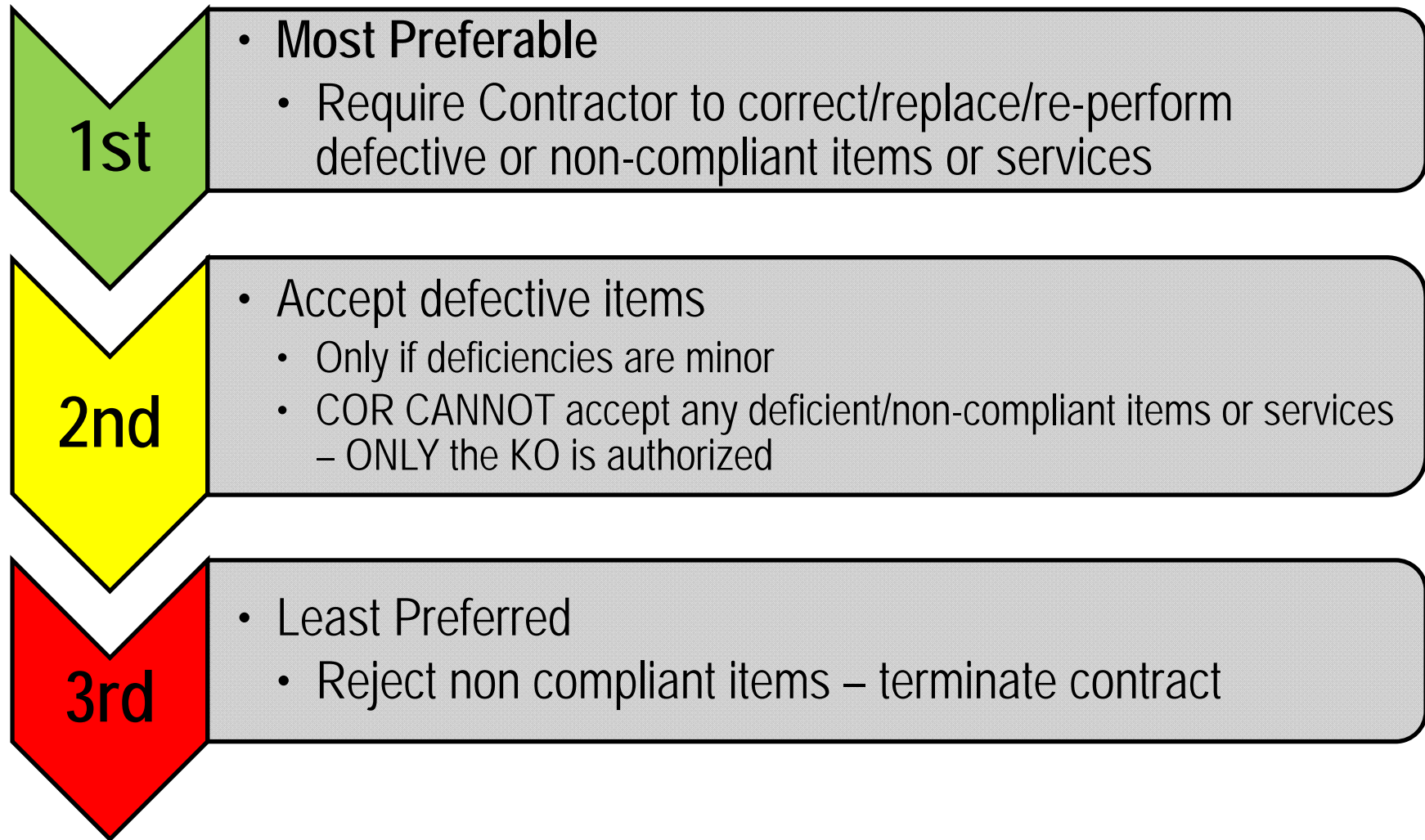
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- Contractual Remedies
  - Options for dealing with non-compliance:
    - Poor performance
    - Delays in performance
- Claims and Disputes
- Contract Terminations

*Remedy* = The right of one contracting party when the other does not fulfill their contractual obligations

# Dealing with Non-Compliance

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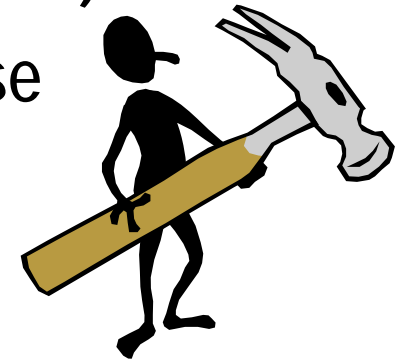
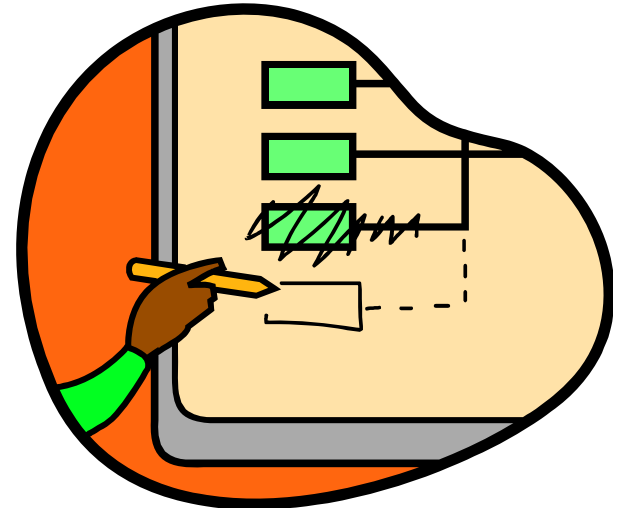
# Remedies Specifically in Contract

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- **Inspection** clauses
  - Reject work or allow re-work
- Invoke other specific contract clauses
  - Stop/Suspend Work, Liquidated Damages, Warranty
  - Termination (Cure Notice, Show Cause)
- Withhold or reduce award or incentive fees
- Suspend progress payments
- Decline to extend/exercise contract Options

# Additional Remedies

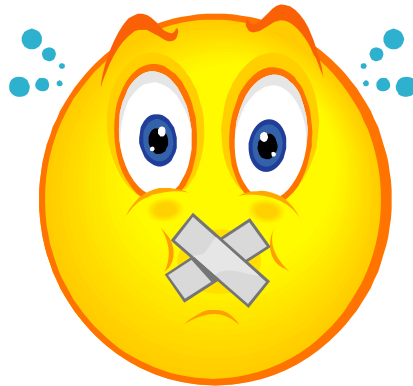
- Other available remedies:
  - Modify the contract
  - Claims or consideration
  - Legal recourse
  - Document in COR File
  - Use Alternative Disputes Resolution (ADR)
  - Document in past performance database



# FYI: Silence is NOT Golden

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Silence on the part of the Government could be interpreted by the contractor as acceptance by the Government of substandard products or services



# FYI: Potential Warning Signs

Complaints from subcontractors

Complaints from site workers

Repeated safety violations

Failure to meet performance deadlines

Persistent complaints about government employees or inspectors

Repeat incidents of poor quality work





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# Questions?

See CORT-Tool at:

DPAP, Program Development and  
Implementation, eBusiness, CORT



*Presented by:  
Kurt Chelf, CPCM  
Professor of Contracting  
Defense Acquisition University*